U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE D. PATE and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 03-1214; Submitted on the Record;
Issued November 4, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty as alleged.

On October 24, 2001 appellant, then a 40-year-old rehabilitation clerk, filed an occupational disease claim alleging that her bilateral carpal tunnel syndrome, bilateral de Quervain's syndrome, ulnar neuropathy and severe anxiety were caused by factors of employment. The record reflects appellant stopped work October 24, 2001 and has not returned.

By letter dated December 7, 2001, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support her claim for anxiety. The Office advised that the other conditions had been accepted under a separate claim number 03-192690[1] and only appellant's claim for anxiety would be considered. Following further development, by decision dated January 10, 2002, the Office denied the claim finding that appellant's anxiety had not occurred in the performance of duty. The Office noted that appellant failed to cite any factors of employment as leading to an anxiety condition or provide any supportive evidence to indicate such. The Office additionally advised appellant of what was required to meet her burden of proof.

On February 4, 2002 appellant, through counsel, requested a hearing. At the hearing held October 24, 2002, appellant testified that she sustained an occupational disease injury to her hands in 1992, which resulted in her being placed in a permanent limited-duty position as a clerk. She alleged that the employing establishment insisted that she work outside of her restrictions although her treating physician had stated that her work restrictions were permanent. Appellant described her job duties and indicated that three weeks prior to October 23, 2001, her supervisor stopped placing trays of mail on the ledge, which was how she had cased her mail over the years.

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[1] The date of injury for claim number 03-192690 was July 21, 1993. The record reflects that the Office authorized surgical removal of a ganglion cyst from appellant's left wrist.

Appellant stated that, when she asked her supervisor to bring her mail to the ledge, he would indicate that he would do so and she would sit there for 30 to 40 minutes waiting for him to bring her the mail, which he never did. She stated that her coworkers would sit "snickering" like they knew why he was not bringing her the mail. Appellant stated that she brought up this problem with upper management, but nothing was resolved. Appellant further stated the mail trays weighed between 25 to 50 pounds and, if she got the mail herself, it would have been a violation of her lifting restrictions. She explained that the purpose of wearing hard splints was not to do simple grasping. It was noted that Dr. A. Lee Osterman, in an October 18, 2000 report, indicated that appellant could lift or carry up to 10 pounds on an intermittent basis and 10 to 20 pounds on an occasional basis. When appellant was questioned as to why she did not break the trays of mail into smaller groups weighing less and then carry the tray to her location, she opined that she was not allowed to manipulate with her hands and fingers. Appellant further stated that this would be difficult to do with the wrist braces she wore. Appellant later indicated that she was able to pick up each piece of mail and place it in a case despite her braces. Regarding the October 23, 2001 meeting, appellant alleged that her supervisor, Robert Beaman, yelled at her to show him where her restrictions prevented her from throwing flats. She further stated that Mr. Beaman stated that he was no longer going to bring her mail to her as this caused other coworkers to feel they should have their mail brought to them as well. Appellant further indicated that Dr. Ginsberg, her primary physician, told her to stop work and placed her on medication for stress. The union official testified that for over a year Mr. Beaman had loaded appellant's ledge and then stopped. He stated that management informed him that Mr. Beaman was too busy to load appellant's ledge with trays of mail. He further indicated that the letters in the tray could weigh between 15 to 25 pounds.

Evidence submitted prior to and at the hearing included a copy of the November 27, 2000 modified job offer, witness statements attesting to the fact that appellant's supervisor stopped putting mail on appellant's ledge and numerous medical reports and forms, which discussed appellant's hand and wrist conditions, elbow condition, cervical and upper extremity conditions and her treatment for an emotional condition. The October 18, 2000 report from Dr. Osterman, supported the fact that appellant had permanent restrictions on lifting and carrying intermittently up to 10 pounds with occasional lifting and carrying no more than 20 pounds. Restrictions also include a intermittent pulling and pushing, intermittent simple grasping, intermittent fine manipulation and intermittent reaching above the shoulder. Additionally, Dr. Osterman indicated that appellant could work self-pace with no quotas and no casing more than 30 minutes.

In an October 24, 2001 statement, appellant advised that she had been in a rehabilitation position since last year to accommodate her restrictions. She stated that, ever since 1994 and her left wrist surgery, the morning supervisor would put mail on the ledge for her and she would case it as fast as she could. Appellant stated that on October 23, 2001 she was waiting for Mr. Beaman, her supervisor, to put the mail on her ledge, but instead he just looked at the mail, turned around and went into his office. She was then paged to the manager's office, where the shop steward was already present. Appellant asserted that Mr. Beaman told her that as of last week he would not be able to put mail on the ledge for her because other people with injuries felt that if he did it for her that he should do it for them. Appellant stated that Mr. Beaman began yelling, "Why can't you do the key desk and where does it say that you can[not] case up flats?" Mr. Beaman took out appellant's folder and stated: "You show me in your folder where it says

why you can't do this because I want you to do your job." Appellant asserted that she was very hurt and told Mr. Beaman that her medical restrictions reflect "self pace, no quota, no demands. Case 30 minutes and rest 30 minutes." She advised that Mr. Beaman had been putting mail on her ledge for over a year and wanted to know what had changed. Appellant asserted that although her shop steward advised her that Mr. Beaman did not know what was going on, she knew Mr. Beaman had discussed her permanent disabilities among her coworkers and she felt violated and embarrassed/harassed. She stated that she was very hurt and stressed as she tried to do her best with what is left of her hands. Appellant stated that any medical information about an employee's condition was confidential and management should not discuss such information. She stated that she suffers with severe pain and swelling daily in her hands, finger, elbows and neck, takes a lot of medication for the pain, she has a degenerating condition in her hands from doing her job and no one seems to care. Appellant asserted that she will not be mistreated, discriminated, discussed about, harassed or embarrassed and that she cannot work under those stressful conditions. She advised that she did not trust Mr. Beaman to be fair as a supervisor to look out for her welfare or well being because he had already violated her, her character and trust.

Following the hearing, additional medical evidence submitted discussed appellant's cervical and upper extremity conditions, a foot condition and her emotional condition. Factual information about the rehabilitation limited-duty job offer was also received. Appellant submitted another statement discussing her testimony and reiterating that she continues to experience severe pain in her bilateral upper extremities. A certificate of appreciation given to appellant was also received.

The employing establishment provided comments from appellant's supervisor dated November 27, 2002. Mr. Beaman advised that on October 23, 2001 appellant was asked in a polite manner to do her job within her restrictions. He stated that nobody ever forced anything on appellant that she was not able to do and she was not asked to do anything out of her restrictions. Mr. Beaman stated that mail was not always put on her ledge for her as usually there was mail on the ledge from the previous day. He advised that when he told appellant to get a handful of mail from the tray, because she was not able to lift anything over 10 pounds, she was determined to make an issue out of anything he said and he did not ask her to do anything out of her restrictions. Mr. Beaman further stated that he did not yell at appellant, he never discussed her business with anyone other than her and the shop steward. He acknowledged that he did not put mail on appellant's ledge everyday, but reiterated that he was not rude towards her when he had asked appellant to do her job and pick up a handful of mail. Mr. Beaman stated that because of his duties as a morning supervisor, he had many responsibilities and sometimes it was not feasible for him to stop what he was doing and put mail on a ledge. Mr. Beaman stated that, if mail was not on a ledge, the employee was to go to the designated area and, by the handful, load the ledge up.

By decision dated January 16, 2003, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[2] Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.[3] On the other hand there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[4]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.[6]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[7] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[8]

In the present case, appellant alleged that she sustained an emotional condition as a result of her supervisor requiring her to work outside of her permanent medical restrictions by no longer delivering the mail to her ledge. She further alleged that her supervisor harassed her and

[2] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

yelled at her in a meeting on October 23, 2001 and had discussed her medical condition to others. Appellant additionally alleged that her coworkers "snickered" at her. Lastly, appellant alleged that she sustained stress due to her employment-related injuries.

Regarding appellant's allegations pertaining to her supervisor's request that she pick-up a handful of mail to put on her ledge, as a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.[9] Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.[10] Likewise, an employee's complaints about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.[11] In determining whether the employing establishment erred or acted abusively, the Board has examined the employing establishment's actions.[12] To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.[13]

Furthermore, for harassment to give rise to a compensable disability under the Act, there must be some evidence that acts alleged or implicated by the employee did, in fact, occur. A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and should not give rise to coverage under the Act absent objective evidence that the interaction with his or her supervisor was, in fact, abusive.[14]

In this case, appellant has not submitted sufficient evidence to establish that the supervisor's request to pick up mail and put it on her ledge was outside of appellant's permanent restrictions, which were for another work-related injury, or constituted error or abuse by the employing establishment.[15] The Office hearing representative found and the record supports, that the trays of mail weighed between 15 to 25 pounds and appellant could go to the area where the mail was and bring it to her case in handfuls. The hearing representative further found, consistent with appellant's medical restrictions, that appellant could perform fine manipulation on an intermittent basis and occasionally lift or carry no more than 20 pounds. Thus, contrary to appellant's testimony at the hearing, appellant would be able to bring the mail to her location by

[9] *See Janet I. Jones*, 47 ECAB 345 (1996).

[10] *Gregory N. Waite*, 46 ECAB 662 (1995).

[11] *Daniel B. Arroyo*, 48 ECAB 204 (1996).

[12] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[13] *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

[14] *Daniel B. Arroyo, supra* note 11.

[15] *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

handfuls or reduce the weight of the trays of mail to less than 20 pounds and still be within her permanent work restrictions. Furthermore, the supervisor's requirement that appellant obtain handfuls of mail to place on her ledge is not unreasonable and no evidence has been submitted to support that it was an error or abusive. Therefore, these allegations do not constitute a compensable factor of employment. Likewise, while the record contains evidence that the October 23, 2001 discussion between appellant and Mr. Beaman upset appellant, there is no probative evidence that he acted in an abusive manner toward appellant or had raised his voice to her. While appellant alleged that this occurred, she provided no probative evidence to support this allegation. In fact, Mr. Beaman specifically denied such allegations and stated that he was never rude to appellant nor did he yell at her during the meeting where the shop steward was present. As appellant bears the burden of proof to support her allegations, she has not established that the October 23, 2001 meeting occurred in the manner alleged.

Appellant alleged that her coworkers would "snicker" at her when she did not receive any mail on her ledge. Part of appellant's burden includes the submission of a detailed description of the conditions, which appellant believes caused or adversely affected the condition for which compensation is claimed.[16] As appellant failed to discuss why this was harassment or provide any probative evidence that this occurred as alleged, the Board finds that this is not accepted as occurring in the manner alleged.

Appellant has also alleged that her emotional condition was caused in part by pain from her prior work-related injury. Although the Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury may be covered under the Act,[17] appellant did not sufficiently articulate her argument or submit adequate evidence in support of her argument. Appellant generally indicated that she feared how her change in work duties would effect her physical condition in the future, but it is well established that the possibility of future injury constitutes no basis for the payment of compensation.[18]

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.[19]

[16] *See Effie O. Morris*, *supra* note 6.

[17] *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

[18] *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

[19] As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record regarding this aspect of her claim; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

The January 16, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member